

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 487

Introduced by Redfield, 12; Combs, 32; Hudkins, 21; McDonald, 41;
Price, 26; Schimek, 27; Stuhr, 24; Thompson, 14

Read first time January 16, 2003

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to insurance; to adopt the Model Act Regarding
- 2 Use of Credit Information in Personal Insurance; and to
- 3 provide severability.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as
2 the Model Act Regarding Use of Credit Information in Personal
3 Insurance.

4 Sec. 2. The purpose of the Model Act Regarding Use of
5 Credit Information in Personal Insurance is to regulate the use of
6 credit information for personal insurance, so that consumers are
7 afforded certain protections with respect to the use of such
8 information.

9 Sec. 3. The Model Act Regarding Use of Credit
10 Information in Personal Insurance applies to personal insurance and
11 not to commercial insurance. For purposes of the act, personal
12 insurance means private passenger automobile, homeowners,
13 motorcycle, mobile homeowners, noncommercial dwelling fire, and
14 boat, personal watercraft, snowmobile, and recreational vehicle
15 insurance policies. Such policies must be individually
16 underwritten for personal, family, or household use. No other type
17 of insurance shall be included as personal insurance for purposes
18 of the act.

19 Sec. 4. For purposes of the Model Act Regarding Use of
20 Credit Information in Personal Insurance;

21 (1) Adverse action means a denial or cancellation of, an
22 increase in any charge for, or a reduction or other adverse or
23 unfavorable change in the terms of coverage or amount of, any
24 insurance, existing or applied for, in connection with the
25 underwriting of personal insurance;

26 (2) Affiliate means any company that controls, is
27 controlled by, or is under common control with another company;

28 (3) Applicant means an individual who has applied to be

1 covered by a personal insurance policy with an insurer;

2 (4) Consumer means an insured whose credit information is
3 used or whose insurance score is calculated in the underwriting or
4 rating of a personal insurance policy or an applicant for such a
5 policy;

6 (5) Consumer reporting agency means any person which, for
7 monetary fees, for dues, or on a cooperative nonprofit basis,
8 regularly engages in whole or in part in the practice of assembling
9 or evaluating consumer credit information or other information on
10 consumers for the purpose of furnishing consumer reports to third
11 parties;

12 (6) Credit information means any credit-related
13 information derived from a credit report, found on a credit report
14 itself, or provided on an application for personal insurance.
15 Information that is not credit-related shall not be considered
16 credit information, regardless of whether it is contained in a
17 credit report or in an application or is used to calculate an
18 insurance score;

19 (7) Credit report means any written, oral, or other
20 communication of information by a consumer reporting agency bearing
21 on a consumer's credit worthiness, credit standing, or credit
22 capacity which is used or expected to be used or collected in whole
23 or in part for the purpose of serving as a factor to determine
24 personal insurance premiums, eligibility for coverage, or tier
25 placement; and

26 (8) Insurance score means a number or rating that is
27 derived from an algorithm, computer application, model, or other
28 process that is based in whole or in part on credit information for

1 the purposes of predicting the future insurance loss exposure of an
2 individual applicant or insured.

3 Sec. 5. An insurer authorized to do business in Nebraska
4 that uses credit information to underwrite or rate risks shall not:

5 (1) Use an insurance score that is calculated using
6 income, gender, address, zip code, ethnic group, religion, marital
7 status, or nationality of the consumer as a factor;

8 (2) Deny, cancel, or nonrenew a policy of personal
9 insurance solely on the basis of credit information, without
10 consideration of any other applicable underwriting factor
11 independent of credit information and not expressly prohibited by
12 subdivision (1) of this section;

13 (3) Base an insured's renewal rates for personal
14 insurance solely upon credit information, without consideration of
15 any other applicable factor independent of credit information;

16 (4) Take an adverse action against a consumer solely
17 because he or she does not have a credit card account, without
18 consideration of any other applicable factor independent of credit
19 information;

20 (5) Consider an absence of credit information or an
21 inability to calculate an insurance score in underwriting or rating
22 personal insurance, unless the insurer does one of the following:

23 (a) Treat the consumer as otherwise approved by the
24 Director of Insurance, if the insurer presents information that
25 such an absence or inability relates to the risk for the insurer;

26 (b) Treat the consumer as if the applicant or insured had
27 neutral credit information, as defined by the insurer; or

28 (c) Exclude the use of credit information as a factor and

1 use only other underwriting criteria;

2 (6) Take an adverse action against a consumer based on
3 credit information, unless an insurer obtains and uses a credit
4 report issued or an insurance score calculated within ninety days
5 prior to the date the policy is first written or renewal is issued;

6 (7) Use credit information unless not later than every
7 thirty-six months following the last time that the insurer obtained
8 current credit information for the insured, the insurer
9 recalculates the insurance score or obtains an updated credit
10 report. Regardless of the requirements of this subdivision:

11 (a) At annual renewal, upon the request of a consumer or
12 the consumer's agent, the insurer shall reunderwrite and rerate the
13 policy based upon a current credit report or insurance score. An
14 insurer need not recalculate the insurance score or obtain the
15 updated credit report of a consumer more frequently than once in a
16 twelve-month period;

17 (b) The insurer shall have the discretion to obtain
18 current credit information upon any renewal before the thirty-six
19 months, if consistent with its underwriting guidelines;

20 (c) No insurer need obtain current credit information for
21 an insured, despite the requirements of subdivision (7)(a) of this
22 section, if one of the following applies:

23 (i) The insurer is treating the consumer as otherwise
24 approved by the director;

25 (ii) The insured is in the most favorably-priced tier of
26 the insurer, within a group of affiliated insurers. However, the
27 insurer shall have the discretion to order such report if
28 consistent with its underwriting guidelines;

1 (iii) Credit was not used for underwriting or rating such
2 insured when the policy was initially written. However, the
3 insurer shall have the discretion to use credit for underwriting or
4 rating such insured upon renewal if consistent with its
5 underwriting guidelines; or

6 (iv) The insurer reevaluates the insured beginning no
7 later than thirty-six months after inception and thereafter based
8 upon other underwriting or rating factors, excluding credit
9 information; or

10 (8) Use the following as a negative factor in any
11 insurance scoring methodology or in reviewing credit information
12 for the purpose of underwriting or rating a policy of personal
13 insurance:

14 (a) Credit inquiries not initiated by the consumer or
15 inquiries requested by the consumer for his or her own credit
16 information;

17 (b) Inquiries relating to insurance coverage if so
18 identified on a consumer's credit report;

19 (c) Collection accounts with a medical industry code if
20 so identified on the consumer's credit report;

21 (d) Multiple lender inquiries, if coded by the consumer
22 reporting agency on the consumer's credit report as being from the
23 home mortgage industry and made within thirty days of one another,
24 unless only one inquiry is considered; or

25 (e) Multiple lender inquiries, if coded by the consumer
26 reporting agency on the consumer's credit report as being from the
27 automobile lending industry and made within thirty days of one
28 another, unless only one inquiry is considered.

1 Sec. 6. If it is determined through the dispute
2 resolution process set forth in the federal Fair Credit Reporting
3 Act, as such act existed on January 1, 2003, 15 U.S.C. 1681i(a)(5),
4 that the credit information of a current insured was incorrect or
5 incomplete and if the insurer receives notice of such determination
6 from either the consumer reporting agency or from the insured, the
7 insurer shall reunderwrite and rerate the consumer within thirty
8 days after receiving the notice. After reunderwriting or rerating
9 the insured, the insurer shall make any adjustments necessary,
10 consistent with its underwriting and rating guidelines. If an
11 insurer determines that the insured has overpaid a premium, the
12 insurer shall refund to the insured the amount of overpayment
13 calculated back to the shorter of either the last twelve months of
14 coverage or the actual policy period.

15 Sec. 7. (1) If an insurer writing personal insurance
16 uses credit information in underwriting or rating a consumer, the
17 insurer or its agent shall disclose, either on the insurance
18 application or at the time the insurance application is taken, that
19 it may obtain credit information in connection with such
20 application. Such disclosure shall be either written or provided
21 to an applicant in the same medium as the application for
22 insurance. The insurer need not provide the disclosure statement
23 required under this section to any insured on a renewal policy, if
24 such consumer has previously been provided a disclosure statement.

25 (2) Use of the following example disclosure statement
26 constitutes compliance with this section: "In connection with this
27 application for insurance, we may review your credit report or
28 obtain or use a credit-based insurance score based on the

1 information contained in that credit report. We may use a third
2 party in connection with the development of your insurance score".

3 Sec. 8. If an insurer takes an adverse action based upon
4 credit information, the insurer must meet the notice requirements
5 of both subdivisions (1) and (2) of this section. Such insurer
6 shall:

7 (1) Provide notification to the consumer that an adverse
8 action has been taken, in accordance with the requirements of the
9 federal Fair Credit Reporting Act, as such act existed on January
10 1, 2003, 15 U.S.C. 1681m(a); and

11 (2) Provide notification to the consumer explaining the
12 reason for the adverse action. The reasons must be provided in
13 sufficiently clear and specific language so that a person can
14 identify the basis for the insurer's decision to take an adverse
15 action. Such notification shall include a description of up to
16 four factors that were the primary influences of the adverse
17 action. The use of generalized terms such as poor credit history,
18 poor credit rating, or poor insurance score does not meet the
19 explanation requirements of this subdivision. Standardized credit
20 explanations provided by consumer reporting agencies or other
21 third-party vendors are deemed to comply with this section.

22 Sec. 9. Insurers that use insurance scores to underwrite
23 and rate risks shall file their scoring models or other scoring
24 processes with the Department of Insurance. A third party may file
25 scoring models on behalf of insurers. A filing that includes
26 insurance scoring may include loss experience justifying the use of
27 credit information.

28 Sec. 10. An insurer shall indemnify, defend, and hold

1 agents harmless from and against all liability, fees, and costs
2 arising out of or relating to the actions, errors, or omissions of
3 an insurance producer who obtains or uses credit information or
4 insurance scores for an insurer if the insurance producer follows
5 the instructions of or procedures established by the insurer and
6 complies with any applicable law or regulation. Nothing in this
7 section shall be construed to provide a consumer or other insured
8 with a cause of action that does not exist in the absence of this
9 section.

10 Sec. 11. (1) No consumer reporting agency shall provide
11 or sell data or lists that include any information that in whole or
12 in part was submitted in conjunction with an insurance inquiry
13 about a consumer's credit information or a request for a credit
14 report or insurance score. Such information includes, but is not
15 limited to, the expiration dates of an insurance policy or any
16 other information that may identify time periods during which a
17 consumer's insurance may expire and the terms and conditions of the
18 consumer's insurance coverage.

19 (2) The restrictions provided in subsection (1) of this
20 section do not apply to data or lists the consumer reporting agency
21 supplies to the insurance producer from whom information was
22 received, the insurer on whose behalf such insurance producer
23 acted, or such insurer's affiliates or holding companies.

24 (3) Nothing in this section shall be construed to
25 restrict any insurer from being able to obtain a claims history
26 report or a motor vehicle report.

27 Sec. 12. The Model Act Regarding Use of Credit
28 Information in Personal Insurance applies to personal insurance

1 policies either written to be effective or renewed on or after nine
2 months after the effective date of this act.

3 Sec. 13. If any section in this act or any part of any
4 section is declared invalid or unconstitutional, the declaration
5 shall not affect the validity or constitutionality of the remaining
6 portions.